

An Analysis of the Venezuelan Securities Legislation: Part I†—The Primary Markets‡

I. Introduction

Venezuela is currently in the midst of a major program of planned development of its domestic capital market.¹ This program is only one of numerous planned capital market development efforts recently undertaken in the developing world.² Underlying this program is the fundamental belief by Venezuelan economic planners that financial development is essential to ensure continued economic growth. Development of the capital market reflects the government's decision to utilize the debt-asset (or finance) system as a major savings and investment mechanism in Venezuela.

The debt-asset system is one way in which a nation is able to elicit savings from its people. The system is voluntary—as opposed to an involuntary system which could rely on taxation or inflation to elicit savings—and utilizes the free market to make a determination as to how capital resources will be allocated. The system uses financial institutions to create and channel financial assets which are voluntarily purchased and held by people. Obvious examples of these assets are stocks, bonds and convertible debentures.³

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†Editor's Note: "Part II—The Secondary Markets" will appear in the Spring issue of *The International Lawyer*.

‡The author notes that this article was written in the period from January, 1977 through May, 1977. Several legislative changes in Venezuela have taken place since the article was written and went to press. Decree 62, 13 INT'L LEGAL MAT'LS 1220-21 (1974) was replaced by Decree 2031 of February 8, 1977. Decree 63, 13 INT'L LEGAL MAT'LS 1221-34 (1974) was replaced by Decree 2442 of November 15, 1977. These legislative changes, although important in terms of Venezuela's foreign investment law, do not significantly affect the substance or basic analysis which is the principle focus of this article.

¹*Oil, Democracy, Development*, ECONOMIST, Dec. 27, 1975, at Survey 3.

²Roth, *Capital Market Development in Israel and Brazil: Two Examples of the Role of Law in Development*, 19 STAN. L. REV. 1277-1306 (1967).

³B. Carl, International Economic Development Law II, 91 (1977) (unpublished manuscript).

Three basic requirements must be met if the debt-asset system is to effectively generate savings. First, potential savers and investors must be willing to hold financial paper in expectation of future profits. In effect, the saving and investing public must have sufficient faith in the system to forego present consumption for future gains. Second, intermediate financial institutions such as stock exchanges and mutual funds must exist and function so as to collect and channel the funds. Third, a relatively efficient private law system is necessary.⁴

This paper examines a key aspect of the Venezuelan program—those policies and laws designed to stimulate the growth of the securities markets, and thus to increase the flow of capital to companies through the sale of equity and debt securities. Capital markets here are defined as the complex of institutions and mechanisms whereby intermediate and long-term funds are pooled and made available to business, government, and individuals, and whereby instruments already outstanding are transferred.⁵ The securities market, a part of the capital market, includes two distinct components. The “primary” market (also referred to as the “issue” market) refers to transactions in newly issued securities, where funds are transferred to companies in exchange for different types of securities. A primary objective is always to stimulate and expand this market. The “secondary” market refers to the exchange of securities already in circulation. Such transactions constitute a transfer of preexisting financial assets. A basic assumption is that an active, well-organized, and efficient “secondary” market is necessary for a viable “primary” market. The former is to provide liquidity for financial assets negotiated in the latter.⁶

Included in this paper are the history, description, and analysis of the Venezuelan program, with special emphasis on the apparent goals selected, measures utilized, results to date, and suggestions for the future. The central and unifying feature of the paper is the effect of the legal system in shaping Venezuela’s capital market program. The Venezuelan case provides a unique insight into the role of law and legal systems in economic development. Law reform and economic regulation in this instance provide concrete examples of planning devices designed and utilized to develop private sector financial institutions. Clearly, however, as the author understands and as will be apparent throughout this paper, the law is only one of many factors which have led to the evolution of the program.

Unlike most developing countries, Venezuela is in an economic position which is both enviable and encouraging. Oil revenues for 1976—the government’s largest source of income—were conservatively estimated at \$5.7

⁴*Id.*

⁵H. DOUGALL, *CAPITAL MARKETS AND INSTITUTIONS* 5 (1970).

⁶A. BASCH AND M. KYBAL, *CAPITAL MARKETS IN LATIN AMERICA* 65 (1970).

billion.⁷ Per capita income for 1976 was approximately \$2,200.⁸ Gross National Product increased 5.5 percent in 1975, and registered a 6 percent increase for 1976.⁹ The country's current five year development plan—total investment of \$52 billion, with a projected average annual increase in Gross National Product of 8.3 percent—is well underway.¹⁰

Given these optimistic figures, why then is Venezuela expected to borrow abroad approximately \$4-15 billion over the next five year period?¹¹ Three closely intertwined factors have contributed to this situation. First, the country has embarked on an unprecedented economic development program designed to diversify the economy away from its oil base.¹² Second, a continuing decline in petroleum revenue has forced the government to consider obtaining finance on the world market for its ambitious development plans.¹³ Third, the demands and dimensions of this development program are so immense that the country's capital market structure is simply not able to generate the domestic savings needed to finance the planned economic diversification.¹⁴

In order to better understand the Venezuelan capital market's shortcomings, it is first necessary to consider the circumstances under which the problem arose and continues to exist to a large extent. Although the country has moved rapidly toward becoming an industrialized nation since World War II, the Venezuelan stock markets have not been an important factor in supplying capital for the growth and maintenance of Venezuela's industries. The reasons for this lackluster performance are numerous, and generally reflect the fact that development of a securities market is a long and tedious process, the success of which depends on the favorable interaction of various factors. Until recently the successful mix of factors was neither present nor possible in Venezuela.¹⁵

A prerequisite for the development of an active and efficient securities market is a relatively lengthy and uninterrupted period of economic and political stability. This stability is a basic condition for winning the confidence of the investing public. The rather serious consequences of political instability and an uncertain economic future, in terms of the business climate and in-

⁷10 BANK OF LONDON & SOUTH AMERICA REPORT 232 (April, 1976).

⁸*Why Not a Eurobond?* EUROMONEY, Dec. 1976, at 19.

⁹10 BANK OF LONDON & SOUTH AMERICA REPORT 231 (April, 1976).

¹⁰*Venezuela's Five-Year Plan: Long on Ambitious Goals, Short on Implementation*, BUSINESS LATIN AMERICA, May 19, 1976, at 155, 158.

¹¹*Keep It in Cash*, ECONOMIST, April 17, 1976, at 73.

¹²*Venezuela's Five-Year Plan: Long on Ambitious Goals, Short on Implementation*, BUSINESS LATIN AMERICA, May 19, 1976, at 155, 158.

¹³*Focus on Venezuela: The Rainbow and Pot of Gold Are Beginning to Fade*, BUSINESS LATIN AMERICA, Jan. 28, 1976, at 26-27.

¹⁴*Keep It in Cash*, ECONOMIST, April 17, 1976, at 73.

¹⁵M. HASSAN, ECONOMIST GROWTH AND EMPLOYMENT PROBLEMS IN VENEZUELA 40 (1975).

vestor reaction, are exemplified by the massive capital outflow which Venezuela experienced from 1958-1963. Factors contributing to this crisis included four consecutive years of government deficits, lack of confidence in a fledgling coalition of democratic government, continuing student and peasant unrest, and a temporary decline in oil profitability in Venezuela. The result of this uncertain situation was that companies and investors in Venezuela were unable to secure needed investment capital or dependable investment returns. The capital outflow was not reversed until 1964, when favorable economic conditions and strong government policies halted the precipitous slide.¹⁶

It is only in approximately the last 15 years that Venezuela has achieved a measure of combined economic and political stability so as to pursue a coordinated program of economic development. In the period from 1947 to the present, Venezuelan economic conditions were generally favorable in comparison to other developing countries. This favorable economic situation was due principally to the country's massive reliance upon oil revenues. During this time there was a sizable increase in total government revenues, establishment of basic manufacturing and agricultural industries, maintenance of the bolivar as a stable international currency, and continuation of an overall low inflationary rate.¹⁷ Political stability however, was much more difficult to achieve. Democracy was only restored in 1959, and the country experienced its first peaceful change of government in 1964. Given favorable economic and political developments since 1974, it is reasonably safe to believe that Venezuela has achieved a degree of stability unmatched in most developing countries, and certainly unmatched anywhere in Latin America.¹⁸

A second factor which has seriously impeded a rapid and vigorous development of the Venezuelan securities market is the traditional Latin American attitude toward investment, which is best described as overly cautious and generally indifferent. Private businesses tend to rely on self-financing and are reluctant to accept outside equity participation. Often companies are family-owned or else controlled by a small closed group. Investment requirements are preferably financed with personal savings or bank loans or credits.¹⁹

Coupled with the wary attitude of companies toward accepting outside investors is the absence—until recently, at least—of large numbers of small investors, who are obviously necessary for the development and continuing liquidity of any securities market. Adding to the overall absence of a sizable number of small investors is the traditional preference of those investors who do exist to invest in speculative real estate holdings.²⁰

¹⁶*Id.* 26-36.

¹⁷*Id.* 15.

¹⁸*How to Grow*, ECONOMIST, Dec. 27, 1975, at Survey 10-11.

¹⁹A. BASCH AND M. KYBAL, CAPITAL MARKETS IN LATIN AMERICA 154 (1970).

²⁰*Id.*

A third factor which restricted the growth of the securities market was the lack of an effective legal and institutional framework which was capable of providing minority shareholder protection.²¹ This situation is best exemplified by looking at the small number of basic legal safeguards available to hypothetical Venezuelan investor Juan Diaz in the 1960s. Senor Diaz made a \$1,000 investment in C.A. Telares de Caracas [hereinafter referred to as CATC], and as a result obtained 100 shares (at \$10 per share) of the company's stock. The company's total number of outstanding shares during this hypothetical period remained constant at 10,000. Assuming Senor Diaz did not increase his equity investment, he controlled one percent of the company stock and was clearly a minority shareholder. Control of CATC during this period remained in the hands of the Sanchez brothers, Emilio and Jorge, who together owned eighty-three percent (8,300) of the outstanding shares of stock.

The Venezuelan Commercial Code is the starting point to determine the minority shareholder protection afforded to Senor Diaz. The code reserved to the state the power to ensure that companies fulfilled the legal requirements in regard to their organization and functioning.²² This supervisory authority was quite limited however, since the only organ that exercised such function was the Commercial Register, whose intervention consisted merely of receiving, approving, and filing the necessary documents and financial reports (basically an annual profit and loss statement). If the CATC had not complied with its duty to register the necessary documents, then the Commercial Register apparently was without authority to force the company to do so.²³ In fact, prior to 1973 there did not exist any state organ which supervised in any manner the ongoing activities of companies.

As a shareholder in CATC, Senor Diaz naturally desired to keep abreast of the company's financial condition. His right of inspection in this regard was quite limited however. The code did not provide for an individual shareholder's right of inspection of company books and records.²⁴ A major obstacle to any inspection of company books or records was the code's provision that no court or official authority was permitted to investigate whether books were maintained, and in case they were, if they were maintained according to the specifications of the code.²⁵ The code further prohibited any general examina-

²¹*Id.* 154-55.

²²O. Lazo, *Codigo de Comercio de Venezuela*, art. 200, at 231 (1962). [hereinafter referred to as "*Codigo de Comercio*"].

²³CEMLA, *EL MERCADO DE CAPITAL EN VENEZUELA* 22 (1968). [hereinafter referred to as CEMLA].

²⁴*Compare* this to shareholder rights of inspection provided by TEX. BUS. CORP. ACT ANN. art. 2.44(B).

²⁵*Codigo de Comercio*, art. 40, at 110.

tion of company books, except in case of liquidation, succession, or bankruptcy.²⁶

The code, however, did provide for one or more "comisarios" (independent auditors), who were to be elected at shareholder meetings.²⁷ These independent auditors were theoretically supposed to review the financial condition of the company, attend the shareholder meetings, and prepare reports on the action taken by the board of directors.²⁸ In regard to the annual shareholders' meeting, the comisarios were to receive from the board of directors, one month in advance of the meeting, a report on the financial condition of the company.²⁹ The comisarios were then required to prepare their report for distribution to the shareholders at least 15 days prior to the date of the annual meeting.^{30,31} If in fact the comisarios of CATC were typical of the period, they would most likely arrive at the meeting 30 minutes before it began, "examine" the financial statements and sign a report prepared by some official of CATC.³² In effect, Senor Diaz would have no advance notice of the company's financial condition since the code did not require publication of financial statements, nor that such statements be sent by mail to registered shareholders.³³

The comisarios were not required to be shareholders, nor were they required to have any special training or qualifications.³⁴ The real importance of the comisario was found in his right to unlimited inspection of all the company's books, registers, and documents.³⁵ In the case of Senor Diaz, however, the CATC comisarios were of little value, since both had been "elected" previously by the controlling Sanchez brothers.

Senor Diaz also had the right, when he considered it proper or believed that CATC was being poorly administered, to demand that the comisarios investigate the complaint and make a report at the next shareholders meeting. However, Senor Diaz' demand would only be effective if his claim was supported by at least ten percent of the shareholders.³⁶

Given the strong probability that the comisarios of CATC would not act to investigate any of Senor Diaz' allegations of wrongdoing, Senor Diaz was still able to avail himself of one additional protective device. If he could marshal

²⁶Codigo de Comercio, art. 41, at 113.

²⁷Codigo de Comercio, art. 287, at 319.

²⁸Codigo de Comercio, art. 311, at 365.

²⁹Codigo de Comercio, art. 304, at 359.

³⁰Codigo de Comercio, art. 284, at 318.

³¹Codigo de Comercio, art. 306, at 360.

³²CEMLA, at 24.

³³*Id.*

³⁴Codigo de Comercio, arts. 309-11, at 363-65.

³⁵Codigo de Comercio, art. 309, at 363.

³⁶Codigo de Comercio, art. 310, at 363.

the support of at least twenty percent of the shareholders, he would be able to file a complaint in a commercial court. This court was given the authority in these matters to name court-appointed investigators to study the claim and make a report to the court. The expenses of this entire process were to be borne by the plaintiff.³⁷ If the court found Senor Diaz' claim to be unfounded, it would dismiss it. If Senor Diaz' claim was found to be justifiable, then the only remedy that the court could dictate would be to call a special shareholders meeting.³⁸ The obvious problem facing Senor Diaz in this case was that even this remedy would be of no avail, since the alleged wrongdoing directors controlled eighty-three percent of the CATC stock, and therefore made it impossible to obtain the twenty percent of shareholders required to present the claim before a court. In the unlikely event that any action could be taken against the board of directors of CATC, it was doubtful that any sanctions or corrective measures could be applied, since all shareholder actions or resolutions in this regard could be undertaken only by decision of all assembled shareholders.³⁹

As a minority shareholder, Senor Diaz was further hampered by the code's failure to specifically provide for the election of the board of directors through cumulative voting. Article 292 of the code merely provided that shares were to be of equal value and that shareholders were to have equal rights.⁴⁰ The bylaws of CATC, not unexpectedly, did not provide for the board to be elected through cumulative voting. As a result, Senor Diaz was most likely prevented from having himself or other minority shareholders being elected to the board and reporting any manner in which CATC was being mismanaged.

If Senor Diaz suspected that the Sanchez brothers were utilizing to their exclusive benefit information obtained as a result of their position on the board of directors (a common example being being engaged in the purchase or sale of CATC shares on the Caracas stock exchange on the basis of inside information),⁴¹ there was nothing he could do since the code provided no legal sanctions whatsoever for this type of activity.⁴²

The shortcomings of the old legal and institutional framework which confronted small investors such as Senor Diaz resulted in widespread investor preference for fixed-income securities such as corporate bonds and government bonds. Preference for this type of security investment, compared to com-

³⁷Compare this to TEX. BUS. CORP. ACT ANN. art. 2.44(C).

³⁸Codigo de Comercio, art. 291, at 333-34.

³⁹Codigo de Comercio, art. 310, at 363.

⁴⁰Codigo de Comercio, art. 292, at 342.

⁴¹A 1968 study of the Venezuelan capital markets, undertaken by the Inter-American Development Bank and the private investment firm Deltec Panamerica, S.A., noted that there were reported many notorious incidents involving insider trading. Unfortunately, the study did not indicate specifically when these abuses occurred or the companies and individuals involved therein. CEMLA, at 23.

⁴²CEMLA, at 23.

mon stocks for instance, was also due to the fixed-income securities' relatively high degree of liquidity, favorable net yields, and the requirement that institutional investors place a percentage of their resources in government securities.

A fourth factor which impeded the development of the Venezuelan securities market was the stock exchanges themselves and the manner in which they functioned. Prior to 1974 two independent stock exchanges, the Bolsa de Caracas and the Bolsa de Miranda, existed in the country.⁴⁴ This factor by itself presented a problem, since the actual volume of transactions on both the exchanges was not sufficient to permit the approximately 60 active brokers to obtain adequate revenues or profits. As a result, the number of brokers and specialists dedicated solely to securities transactions remained quite small.^{45,46} Self-regulation and application of disciplinary measures by the exchanges were practically nonexistent.^{47,48} Any potential investor found that the requirements for a company to list its securities with the exchanges were very general and were applied in a lax manner. A company was able to request that its securities be listed merely by writing a letter of application and enclosing with it the charter, bylaws, and most recent financial statement. Once the company was listed, it was simply required to inform the exchange of any change in its bylaws and to forward company financial statements on a periodic basis. Failure to comply with those requirements supposedly led to the company losing its listing. In fact, there are no indications that any listing request was ever denied or that any penalties were ever applied.^{49,50}

Characteristically, securities transactions on the two exchanges were weak and narrow, with few issues being listed and only a select few of those being traded regularly.⁵¹ Furthermore, there appeared to be rather significant changes in the composition of the securities transactions, as evidenced by the period from 1961 to 1969. Transactions for this period indicated a definite shift away from equity shares and toward government bonds as shown on Table I appearing on page 179.

⁴³A. BASCH AND M. KYBAL, *CAPITAL MARKETS IN LATIN AMERICA* 153-54 (1970).

⁴⁴D. EITEMAN, *STOCK EXCHANGES IN LATIN AMERICA* 54-65 (1966).

⁴⁵CEMLA, at 91.

⁴⁶A. BASCH AND M. KYBAL, *CAPITAL MARKETS IN LATIN AMERICA* 154 (1970).

⁴⁷CEMLA, at 92.

⁴⁸A. BASCH AND M. KYBAL, *CAPITAL MARKETS IN LATIN AMERICA* 154 (1970).

⁴⁹*Id.*

⁵⁰CEMLA, at 94-96.

⁵¹A. BASCH AND M. KYBAL, *CAPITAL MARKETS IN LATIN AMERICA* 53, 76, 152 (1970).

TABLE I⁵²
Combined Trading on Caracas and Miranda Stock Exchanges
According to Type of Security, 1961-69
(as percentage of total volume of trading)

Year	Shares	Government Bonds	Financial Bonds*	Mortgage Bonds/ Mortgage Certificates*	Company Obligations*
1961	28	64	-	3.0	5.0
1965	17	55	-	25.0	3.0
1967	8	73	1	15.6	1.6
1968	6	75	-	10.3	8.6
1969	7	67	-	19.3	6.3

*No definition available

In the late 1960s and 1970s a series of three events occurred which served to stimulate a more rapid development of the country's securities markets. The situation as it then existed clearly provided for a fertile environment for change. The first event was the election of Acion Democratica's [hereinafter referred to as AD] Carlos Andres Perez as president in 1973. The new AD administration, sparked by its charismatic leader, pledged the government to a program of rapid social and economic development.⁵³ One of the government's goals in this ambitious development program was to provide for a wider distribution of the nation's wealth and capital.

The second major event took place fairly rapidly over a two-year period and involved the quadrupling of world oil prices in late 1973 and early 1974. With its heavy dependence on oil revenues, Venezuela has benefited tremendously from the increased world oil prices.⁵⁴ Government planners apparently perceived that they possessed the means to achieve economic development in less time and at less cost than ever before. At long last the country would be able to diversify and develop the economy by means of the long-cherished dream of "sowing the oil" (*sembrar el petroleo*).⁵⁵

⁵²*Id.* at 70.

⁵³*Venezuela's AD Administration Makes Ambitious Pledges*, BUSINESS LATIN AMERICA, March 20, 1974, at 74.

⁵⁴Somewhat of an indication of the extent to which Venezuela benefited is reflected in GNP figures for selected years. In 1972, one year prior to oil price increases, GNP was measured at \$12.20 billion. *Market Indicators for 26 Latin American Countries*, BUSINESS LATIN AMERICA, Dec. 26, 1973, at 414. In 1975, one year subsequent to the increase in oil prices, GNP was measured at \$29.57 billion. *Market Indicators for 26 Latin American Countries*, BUSINESS LATIN AMERICA, Dec. 24, 1975, at 414.

⁵⁵*Plans and Strategies*, ECONOMIST, Dec. 27, 1975, at Survey 20.

The third significant event occurred in December 1973 when the Venezuelan Congress approved the country's entry into the Andean Common Market. Included in this legislative action was ratification of Decision 24 of the Andean Commission.⁵⁶ Decision 24 (also referred to as the Andean Foreign Investment Code, the AFIC, or the Code) established a minimum standard for the regulation of foreign investment in each member country. Regulations for enforcing the Code in Venezuela were promulgated in April 1974.⁵⁷ These new foreign investment regulations represented a conscious attempt by the government to gain greater control over the activities of foreign investors and to channel their investment activities into closer coordination with national development plans.

One important provision of Decision 24 deals with the divestment (also referred to as fadeout) requirements for foreign companies operating in Andean Group countries. In Venezuela, any "new"⁵⁸ foreign investments or enterprises must agree to become "mixed" (by definition, at least 51 percent Venezuelan-owned) within a 15-year period beginning January 1974.⁵⁹ In the case of companies which were established prior to 1974, the divestment requirements must be met if they desire to utilize the Andean Group's free internal trade privileges. Additionally, Venezuelan legislation specifically provided for the reservation of special sectors for "national" companies (by definition, more than 80 percent Venezuelan-owned).⁶⁰ This included public services (telephone, mail, telecommunication, utilities, and security), domestic transportation, television, radio, Spanish-language newspapers, advertising, and domestic marketing companies. Divestment dates for foreign companies already operating in these restricted sectors were set for May 1977.⁶¹

The divestment requirements of the Andean Foreign Investment Code have set the stage for an interesting chain of events. Foreign companies are now required by Venezuelan law to sell to Venezuelan investors specified percentages of their stock by established deadlines. Foreign companies subject to the divestment requirements will be looking for investors. One obvious way in which foreign companies could find the required number of investors within the period of time allotted for their divestment is to make public offerings of stock on the country's stock exchanges.

Given the fairly rigid divestment schedules, it was clear that Venezuela, if it was to comply with the Andean Foreign Investment Code, would have to pro-

⁵⁶Decision 24, 11 INT'L LEGAL MAT'LS 126 (1972).

⁵⁷Decree 62, 13 INT'L LEGAL MAT'LS 1220-21 (1974); Decree 63, 13 INT'L LEGAL MAT'LS 1221-34 (1974).

⁵⁸Any investment or enterprise established after Jan. 1, 1974. Decree 63, art. 19, 13 INT'L LEGAL MAT'LS 1224 (1974).

⁵⁹*Id.* art. 51, at 1229.

⁶⁰Decree 62, 13 INT'L LEGAL MAT'LS 1220-21 (1974).

⁶¹*Id.* art. 2, at 1220.

vide a mechanism whereby it would be possible to effectively carry through the divestment program. In view of the government's allegedly strong commitment to private enterprise and the free market system, it was only natural that the country's capital markets would be considered to aid in the successful implementation of the divestment requirement of the foreign investment code. Having already noted the narrow, weak, and primitive nature of the existing securities markets, it was apparently clear to economic planners that a major reform effort was necessary if the divestment program and economic diversification program were to succeed.

II. Primary Markets

With conditions ripe for the strengthening of the country's financial infrastructure, a deliberate decision was made by the government and certain segments of the private business sector to develop the Venezuelan capital market. The extent of the influence of the private sector in this decision is not totally clear, but it appears to be significant. As early as 1968 Deltec Panamerica, S.A., a subsidiary of Deltec International Limited, had engaged in an extensive study of the future development of the Venezuelan securities market. The recommendations of the Deltec study can be found in *El Mercado Capiales en Venezuela*, published in 1968 by the Mexico City based Centro de Estudios Monetarios Latinoamericanos. Also, in 1971-72, there was an extensive study of Venezuela's financial markets conducted by the Capital Markets Department of the World Bank's International Finance Corporation at the request of the Venezuelan Minister of Finance.

The result of the government and private business sector decision was the Capital Markets Law of May 1973⁶² followed by a reform version in May 1975.⁶³ Basically these two laws were designed to regulate the issuance, distribution, and trading of securities, as well as the operations of the various individuals and institutions involved in such activities. The new legislation, much like the Brazilian model on which it was based in part,^{64,65} accomplished in a relatively short period of time what other more developed countries had done over a longer period of time and through various laws and agencies.

Like the Federal Securities Act of 1933,⁶⁶ the Venezuelan Capital Markets

⁶²*Ley de Mercado de Capiales*, 339 GACETA LEGAL 2-15, Feb. 15, 1973. [hereinafter referred to as "1973 Law"].

⁶³Decree 882, 394 (Supp.) GACETA LEGAL 46-59, May 31, 1974.

⁶⁴Poser, *Securities Regulation in Developing Countries: The Brazilian Experience*, 52 VA. L. REV. 1283 (1966).

⁶⁵D. Trubek, *Law, Planning and Development of the Brazilian Capital Market* (Bull. Nos. 72-73, April 1971).

⁶⁶15 U.S.C. § 78a *et seq.*, (1970).

Law^{67,68} relies heavily on registration and disclosure in regulating the public distribution of securities. In its search for a suitable method of control for the securities markets, the Venezuelan government was able to choose from three possible models. One approach provides for the government to evaluate the investment merits of any security prior to allowing it to be offered to the public. Some state blue-sky laws require a state agency to pass on the merits of a proposed securities issue to protect public investors from worthless offerings.⁶⁹ California at one time required that prior to an issue of securities a state commissioner find the proposed plan of business of the issuing company to be "fair, just and equitable."⁷⁰

In France, governmental control over the issuance and trading of securities is based on overall national fiscal, economic, and political considerations. The needs of the individual investor are of secondary importance only.⁷¹

A second approach—far less rigorous than the California or French models—is that followed in England, where there are few statutory controls. There, underwriters and stock exchanges are responsible for screening issues offered to the public. This self-control system is effective in protecting investors from fraud for a number of reasons. Of primary importance is that underwriters' reputations are at stake with every issue they support. Also, given the absence of over-the-counter trading in England, any company desiring to make a public offering of securities must list the securities on an exchange. New issues, prior to being listed on an exchange, are carefully examined by a "new issues committee" to ensure the investment merits of the issue as well as adequacy of disclosure.⁷²

A third approach, falling midway between the more rigorous California/French model and the less stringent English model, is the approach taken in the Federal Securities Act of 1933,⁷³ by which the federal government was given the authority to force the disclosure of specified information. In this role the federal government does not evaluate the investment merits of securities.⁷⁴

It was the third approach which was adopted by Venezuela. It provided the statutory and administrative basis for a system to rely primarily on registration and disclosure. In opting for the United States registration/disclosure model the Venezuelan government was forced to consider and balance a number of important factors. The one factor which suggested implementing a rigorous

⁶⁷*Ley de Mercado de Capitales*, 339 GACETA LEGAL 2-15, Feb. 15, 1973.

⁶⁸Decree 882, 394 (Supp.) GACETA LEGAL 46-59, May 31, 1974.

⁶⁹Roth, *Capital Market Development in Israel and Brazil: Two Examples of the Role of Law in Development*, 19 STAN. L. REV. 1277, 1289 (1967).

⁷⁰Cal. Corp. Code § 25507 (West Supp. 1966).

⁷¹Roth, *supra* note 69, at 1277, 1289.

⁷²*Id.*

⁷³15 U.S.C. § 78a *et seq.*, (1970).

⁷⁴Roth, *supra* note 69, at 1277, 1289.

“on the merits” approach was that the system which existed prior to 1973 offered little or no protection to the investor—as amply demonstrated by the case of Senor Diaz and CATC—and as a result impeded public investment in the securities market.⁷⁵ This unhealthy situation was brought to light as early as 1968, when a joint study by the Inter-American Development Bank and Deltec Panamerica, S.A., noted the ineffective and unwieldy safeguards afforded by the Venezuelan Commercial Code⁷⁶ and the overall lack of public investor confidence in the securities markets.⁷⁷ Although no specific incidents or investigations are cited specifically, the Deltec report referred to rampant abuses of minority shareholder rights by majority shareholders committed during the 1950s and 1960s.⁷⁸

A number of factors however, worked strongly against establishing a regulatory system which would be too difficult for the government to implement and for companies and investors to comprehend. In the case of the government there was and still continues an acute shortage of skilled and qualified personnel to staff and fully implement a rigorous regulatory system.⁷⁹ Also, if regulatory measures were to be effective in a practical sense, it would be necessary that the investing public understand what type of legal protection was available. This problem takes on an added dimension when one considers that any attempt to bring about widespread investor participation in the securities markets would involve bringing a large number of new and relatively unsophisticated investors into the market. In the case of the companies, a rigorous regulatory system—complete with the inevitable red tape—might actually have inhibited market development by deterring some companies from going to the capital market for new financing. Given the bleak prospect of having to deal with a potentially difficult system, many companies would probably have chosen to either forego expansion or else seek their traditional sources of funding.

It is important to note one manner in which the Venezuelan system is quite different from the American model. In the case of Venezuela, the securities regulation program was designed primarily for the purpose of developing and building the securities markets. The protection of investors was simply one means of attaining that goal. In contrast, the United States federal securities legislation was intended primarily to protect investors, and secondarily to protect the national economy from excessive abuses growing out of the sale and purchase of securities.

⁷⁵Wiles, *The Venezuelan Capital Markets Law*, 8 INT'L LAW 305, 306 (1974).

⁷⁶CEMLA, at 21-25.

⁷⁷*Id.* at 104.

⁷⁸*Id.* at 23, 104.

⁷⁹Inchausti, *Skilled Manpower Shortage Slows Venezuela Growth*, CHRISTIAN SCIENCE MONITOR, April 29, 1977, at 18, col. 1.

The scope and dimension of the disclosure requirements are quite broad. Since these requirements were apparently based in large part on the Federal Securities Act of 1933,⁸⁰ the author will explain the key elements of this part of the Venezuelan law through a comparison and contrast with relevant provisions of the 1933 Act. It is noted that this is not intended to be an in-depth description and analysis of the American securities regulations. Rather, this is an attempt to highlight the similarities and differences which exist between the two pieces of legislation.

Under the 1933 Act there is an express prohibition against the use of interstate facilities or the mails to "offer to sell" a security unless a registration statement has been filed with the Securities and Exchange Commission (SEC).⁸¹ To facilitate the registration of securities the SEC has numerous special registration forms. These different forms vary in their disclosure requirements; however, their basic purpose remains the same—provide disclosure of the essential facts pertinent to a given type of offering while at the same time minimizing the burden and expense of compliance with the law.⁸² The registration statement is designed to force disclosure of all factors which may affect the fairness of the issue and the financial status of the corporation. Full details must be provided as to the identity and background of corporate officers and directors, compensation they receive, sales costs, and underwriting commissions and discounts.⁸³ In addition, the investors must be furnished with a prospectus containing key information set forth in the registration statement so as to enable them to make informed decisions.⁸⁴

Up to this point the Venezuelan law follows the general pattern of the 1933 Act; however, there are some important distinctions. Unlike its American counterpart, the Venezuelan law does not specifically require a registration statement per se to be filed with and approved by the Venezuelan National Securities Commission (CNV)—Venezuela's equivalent to the SEC—prior to a public offering of securities. Instead, the law provides for a standard list of basic corporate information to be submitted to the CNV by any company desiring to make a public offering.⁸⁵ This information is subsequently available for public inspection in the National Securities Register.⁸⁶ Venezuela's registration requirements are like American registration statements in that they elicit similar information and are designed to provide disclosure of key information which should aid investors in making a realistic

⁸⁰15 U.S.C. § 78a *et seq.*, (1970).

⁸¹*Id.* § 77e.

⁸²*Id.* § 77g, § 77j.

⁸³*Id.* § 77g.

⁸⁴*Id.* § 77j.

⁸⁵1973 Law, art. 20, § 1-9, at 3-4.

⁸⁶*Id.* arts. 14-16, at 3.

appraisal of the merits of the securities and thus exercise an informed judgment in deciding whether to purchase them.

The Venezuelan law differs from the 1933 Act in regard to the registration requirements in another important aspect. The American law provides for numerous exemptions from the registration requirement. Some of these exemptions include: (1) private offerings to a limited number of people or institutions who have access to the type of information registration would disclose, and who do not redistribute the securities;⁸⁷ (2) securities of governmental instrumentalities, charitable institutions, and banks;⁸⁸ (3) offerings not in excess of certain specified amounts made in compliance with regulations of the SEC.⁸⁹ The Venezuelan law is much more comprehensive and exempts from its regulation only public offerings of short-term notes (less than one year), public debt securities, and those securities issued under the General Banking Law.⁹⁰ Query: if it were shown that registration requirements were too burdensome for small- and medium-sized companies, then would it be possible to induce more of these companies to make public offerings if less stringent registration requirements were established for certain classes of offerings? As it stands now there are few exemptions from the Venezuelan law's registration requirements. In making this inquiry the author is well aware that the registration requirements are designed to protect investors by providing them with sufficient information to make an informed investment decision. A factor also to be considered however, is whether these registration requirements will deter companies from making public offerings, and if so, how many companies.

One possibility is to authorize the CNV to exempt certain issuances from registration requirements where it is not necessary in the public interest by reason of the small amount involved or the limited character of the offering. Obviously, a specified bolivar amount would have to be established as to when a public offering becomes significant. Also, it would probably still be advisable to require the issuer to file with the CNV either an abbreviated offering circular or a brief notice form containing basic information about the stock and its issuer.

The Venezuelan and American laws are also quite different in terms of prospectus requirements. The Venezuelan law, unlike the 1933 Act, contains no statutory prospectus requirements such as Section 10,⁹¹ whereby it is required that investors be furnished with a prospectus containing the salient data set

⁸⁷15 U.S.C. § 77d (1970).

⁸⁸*Id.* § 77c.

⁸⁹*Id.*

⁹⁰1973 Law, art. 1, at 2.

⁹¹15 U.S.C. § 77j (1970).

forth in the registration statement. Instead, the Venezuelan law simply requires that any prospectus arising from the issuance of securities must be submitted to and approved by the CNV,⁹² and then goes on to provide specific prospectus requirements if the selling circular is to be used in connection with a public offering.⁹³ These requirements are fairly comprehensive and include submission of the text of the prospectus to be used in the public offering, information as to the end use of the funds being raised, financial data for the previous four years, professional experience of the company's directors, and information as to the manner in which the securities are to be distributed.⁹⁴

The fact that the Venezuelan registration and prospectus information is not required to be furnished to the investor appears to be a major shortcoming of the law. Query: how effective will "public disclosure" of this vital registration information be when the required information is merely "of public record"? Will new and unsophisticated investors know without any difficulty where such information is on file or how to readily obtain it? Would it not be more effective to have a requirement that investors must be furnished with a prospectus prior to making an investment decision?

Of special interest is the degree to which the Venezuelan registration and prospectus requirements are somewhat more stringent than similar American requirements. Under the Venezuelan scheme securities may not be offered publicly until the registration information is filed with the CNV, and the prospectus for the issue and any advertising or publicity associated with the issue is first approved by the CNV. Approval or denial is forthcoming from the CNV within 30 days after the respective information or documents are filed with the CNV.⁹⁵ This period can be extended by the CNV for no more than an additional 30 days.⁹⁶ Adverse decisions by the CNV can be brought before the Commission for reconsideration within 10 days after the party of interest has been notified of the original decision. In this case the CNV must rule on the appeal within 30 days after it is filed.⁹⁷ If the CNV denies the party's appeal, then a final appeal from an adverse decision by the CNV can be brought before the Political-Administrative Chamber of the Supreme Court of Justice within 10 days after the CNV's decision.⁹⁸ The intent of the Venezuelan law seems to be that a prospective investor will have at least thirty days in which to study the key registration information necessary to make an informed and intelligent investment decision. Query: is the Venezuelan law ironclad in the

⁹²1973 Law, art. 10, § 7, at 2.

⁹³*Id.* art. 20, § 10, at 3.

⁹⁴*Id.*

⁹⁵*Id.* art. 23, at 4.

⁹⁶*Id.*

⁹⁷*Id.* art. 12, at 3.

⁹⁸*Id.* art. 13, at 3.

sense that no public offering or any publicity associated with it may be distributed in any form, oral or written, prior to approval by the CNV?

One particular provision of the law is troublesome since it appears to negate much of the openness brought about by the registration and disclosure requirements. Although Article 16 specifically states that all documents, reports, and data required under the law will be registered and accessible to anyone who solicits the information, there is a further provision which gives the CNV the power to designate any of this information as confidential and subjects anyone who gives this classified information to the public to a specified fine.⁹⁹ Obviously, the potential for abuse here is tremendous, especially in view of the traditional desire to maintain absolute secrecy surrounding any and all corporate affairs. The author notes that this provision is quite vague, and provides no limits or guidelines as to how much information can be classified as "confidential." Query: to what extent will Article 16 be used to defeat registration and disclosure requirements and thereby preserve the traditional veil of corporate secrecy provided by Articles 40 and 41 of the Venezuelan Commercial Code?

A leading critic of the American securities regulation field notes that the realities of the 1933 Act's registration process indicate that it does not work in accordance with its underlying assumptions.¹⁰⁰ The original assumption of the Act was that registration information would be filed and that the principal features of the disclosure would be provided to the prospective investor, thereby enabling him to make an informed investment decision.¹⁰¹ After the filing of the registration information, the securities could be offered orally or by certain summaries of the information in the registration statement—also referred to as a preliminary "red herring" prospectus—as permitted by the SEC rules.¹⁰² Release of the preliminary prospectus was designed to provide basic registration information to the public before the registration statements became effective. Release of the preliminary prospectus was especially important in view of the fact that the Act provides that registration statements are effective on the 20th day after filing. The preliminary prospectus took on added importance given the mass of information buried in the SEC's files, the short time span for review by the SEC, and the public's desire to be provided with basic information.

The problem, as Professor Kripke notes, is that there is no assurance that the "red herrings" do reach prospective investors with any complete coverage.

⁹⁹*Id.* art. 16, at 3.

¹⁰⁰Kripke, *The SEC, the Accountants, Some Myths and Some Realities*, 45 N.Y.U.L. REV. 1151, 1155 (Dec. 1970).

¹⁰¹*Id.* 1155-57.

¹⁰²15 U.S.C. § 77h (1970).

Characterizing the existing situation as "ludicrous," he indicates that the final definitive prospectus is not required to be, and routinely is not, delivered to the investor until after he has committed himself. The Act as it now exists is of value to most investors only if they study the incomplete "red herring" prospectus.¹⁰³

One of the most important aspects of the Capital Markets Law was the creation of the National Securities Commission (Comision Nacional de Valores or CNV).¹⁰⁴ An administrative agency modeled after the United States Securities and Exchange Commission, the CNV is entrusted with regulating the entire workings of the securities industry. The Commission is part of the executive branch and is directly responsible to the Minister of Finance (Ministerio de Hacienda).¹⁰⁵ The president of the CNV serves a term of four years, while the other four directors serve for three years each.¹⁰⁶

Qualifications for members of the Commission are fairly stringent. Specifically required are prior experience in financial, economic, and commercial matters. Special attention is directed toward preventing any conflicts of interests or outside political pressures so as to ensure the independence and impartiality of the CNV.¹⁰⁷

At the outset, though, it would seem that these requirements present somewhat of a problem. It is recognized that these provisions are one step toward the overall goal of developing standards of conduct for any person participating in the capital market. This in turn is part of the primary aim of creating justifiable investor confidence in the capital markets so as to encourage widespread public investor participation. The reality of adequately recruiting and maintaining an independent and impartial agency staff such as the CNV requires—given the present shortage of skilled and technically qualified personnel in Venezuela¹⁰⁸—is somewhat difficult to reconcile with the legislation. Further, if one accepts the belief that securities transactions will increase substantially in the future,¹⁰⁹ it would seem to follow that the demands and duties placed on the CNV staff will increase and continue to expand.

At present, the Venezuelan civil service nominally functions under a system of merit and competitive examination. In practice, however, it is a spoils

¹⁰³Kripke, *supra* note 100, at 1155-56.

¹⁰⁴1973 Law, art. 2, at 2.

¹⁰⁵*Id.*

¹⁰⁶*Id.* arts. 3-4, at 2.

¹⁰⁷*Id.* art. 5, at 2.

¹⁰⁸*Keep It in Cash*, *ECONOMIST*, April 17, 1976, at 73.

¹⁰⁹This assumption is possible in view of the increasing volume and amount of securities transactions, and also by the government's stated goal of making Caracas a major international financial center. Calatchi, *Venezuela's Capital Market Takes on an International Flavour*, *EUROMONEY*, April, 1976, at 53-57.

system which fosters little or no continuity. This problem is compounded by two additional factors—a wage scale which is lower than in private industry, and the absence of a strong tradition of honest and efficient management in the civil service. Clearly this is part of a much larger administrative problem which is not in any way limited only to the CNV. The implications are serious nonetheless.^{110, 111} In an early article dealing with the Capital Markets Law, it was noted that the proper functioning of the market required a legal organism which inspired the confidence of the public investor so as to promote a greater acceptance of the securities issued. The cornerstone of this confidence was to be the CNV.¹¹² Given the currently bleak administrative situation, and an immediate future which holds little prospect for improvement, will the ability of the Commission to function effectively be seriously hindered? If, in fact, the CNV fails to maintain its independence and impartiality, it would appear that no amount of legislation would be effective in winning widespread investor confidence.

How extensive is the regulatory power of the CNV? Theoretically, the powers and duties of the Commission are quite broad, and center around the authority to approve or deny any application to make a public offering.¹¹³ Basically, any “public offering” of title securities falls within the regulatory power of the CNV.^{114, 115} By definition, “securities” mean “the shares of companies and other instruments issued in large numbers which possess identical characteristics and grant the same rights within their class.”¹¹⁶ “Public offer of securities” is defined as “any offer made to the public or to sectors or to determined groups by means of advertising or publicity.”¹¹⁷ The author notes that both of these latter definitions are vague and imprecise and could be the cause of uncertainty and confusion. In regard to the definition of “securities,” there is no indication or clarification as to what number of instruments constitutes “large” so as to fall within Article 18’s definition. In regard to the definition of “public offer of securities,” there is no clarification of what is meant by “advertising or publicity.” Query: does this include all forms of oral and written communication to the public or to potential investors? Does this include all forms of solicitation of investors?

Although it is not certain, it would appear that a generous delegation of authority to the CNV was provided in Article 19 of the law so as to deal with

¹¹⁰*Rebel with a Cause*, ECONOMIST, Dec. 27, 1975, at Survey 10.

¹¹¹*Venezuela: Uncomfortable Audit*, LATIN AMERICA, June 25, 1976, at 198.

¹¹²Wiles, *The Venezuelan Capital Markets Law*, 8 INT’L LAW. 305, 306 (1974).

¹¹³1973 Law, art. 10, at 3.

¹¹⁴*Id.* arts. 1-2, at 2.

¹¹⁵Short-term notes, public debt securities, and securities issued under the Banking Law are covered by prior legislation.

¹¹⁶1973 Law, art. 18, at 3.

¹¹⁷*Id.* art. 19, at 3.

any ambiguities or uncertainties.¹¹⁸ The Article provides that any doubt (as to whether there exists a public offering) is left to the discretion of the CNV.¹¹⁹

One of the functions of the CNV is to act as a collector and disseminator of securities information which is now required to be on record. One manner in which the Commission is supposed to accomplish this is by issuing regular reports on the capital markets so as to keep the investing public and the National Executive fully informed.¹²⁰ The depository for this newly obtained information is the National Securities Register.¹²¹ As was noted previously in the section dealing with registration and disclosure requirements, all information required under the law for a company making a public offering is now theoretically available to anyone who solicits it.¹²²

The CNV's role of acting as collector and disseminator of registration and prospectus information is important in both a symbolic and a real sense. A governmental agency with real authority now possesses the means by which it is able to pierce the veil of secrecy which companies, both foreign¹²³ and national, have traditionally relied upon in areas such as the keeping of books and accounts. Without doubt, this authority and the effective use of it is absolutely essential if there is to be widespread public investor confidence.

The means by which the CNV is able to pierce the previously almost impenetrable veil of corporate secrecy is provided by Article 21 of the law.¹²⁴ The broad grant of authority in this provision seems to give the CNV an almost unlimited right to inspect company books to effectuate the purpose of the law.¹²⁵ This provision does not specifically provide a shareholder with an unlimited right of inspection, but it does seemingly provide a shareholder or potential investor with the opportunity—at least indirectly through the CNV—to overcome the Venezuelan Commercial Code's previous prohibition against inspection of company books by minority shareholders or government officials.¹²⁶

At the heart of any regulatory scheme is the threat of sanctions being imposed upon violators of the laws. The Venezuelan Capital Markets Law provides for both fines¹²⁷ and imprisonment¹²⁸ as part of its enforcement mechanism.

¹¹⁸*Id.*

¹¹⁹*Id.*

¹²⁰*Id.* art. 10, at 3.

¹²¹*Id.* arts. 14-16, at 3.

¹²²*Id.*

¹²³In the case of American based transnational companies this obsession for secrecy is somewhat paradoxical, since by the United States federal securities legislation much of this same information is already of public record.

¹²⁴1973 Law, art. 21, at 4.

¹²⁵*Id.*

¹²⁶Código de Comercio, arts. 40-41, at 110-13.

¹²⁷1973 Law, arts. 136-47, at 14.

¹²⁸*Id.* arts. 148-50, at 15.

Once again the Federal Securities Act of 1933 provides a measure of comparison with the Venezuelan law's enforcement provision. The 1933 Act provides both civil and criminal sanctions for violation of its registration requirements, and for any fraud in connection with the issuance of the securities or the filing of the registration statement. Under Section 11 of the Act,¹²⁹ if the registration statement, when it becomes effective, contains a misstatement or omission of material fact, any person acquiring the securities without knowledge thereof is entitled to maintain an action for damages.¹³⁰

The Act, pursuant to Section 12, also expressly imposes civil liability on any person who offers or sells a security in violation of Section 5 (registration and prospectus requirements) or through means of interstate commerce or the mails by use of material misstatements or omissions.¹³¹ In addition, Section 17 of the Act makes it unlawful for any person to offer or sell securities through the mails or in interstate commerce by means of any device or scheme to defraud or by means of any misstatement or omission of material fact.¹³² Unlike Sections 11 and 12, which expressly create a right of action for violation, Section 17 provides for civil and criminal liability by implication. This provision is also referred to as the General Anti-Fraud Section of the 1933 Act.

Unlike its American counterpart, the Venezuelan law does not have three separate enforcement provisions. Instead, it provides express administrative and penal sanctions. The most serious administrative sanctions carry with them fines ranging from 10,000 to 40,000 bolivars.^{133, 134} This section appears to be more closely related to Section 12 (imposition of general civil liability) of the 1933 Act, in the sense that the Venezuelan provision aims at punishing violations of the registration requirements.¹³⁵

Article 147 of the Venezuelan law provides for lesser fines, ranging from 2,000 to 20,000 bolivars.¹³⁶ The section also appears to be related to Section 12 of the 1933 Act, since its emphasis is also toward punishing violations of both registration and prospectus requirements.¹³⁷

Imposition of fines under the above mentioned provisions is not to be taken lightly. Failure to pay penalties assessed under these sections can result in the imposition of prison sentences not to exceed six months.¹³⁸

¹²⁹15 U.S.C. § 77k (1970).

¹³⁰*Id.*

¹³¹*Id.* § 77l.

¹³²*Id.* § 77q.

¹³³1973 Law, art. 146, at 14.

¹³⁴4.3 bolivars equal 1.0 U.S. dollars.

¹³⁵1973 Law, art. 146, at 14.

¹³⁶*Id.* art. 147, at 14.

¹³⁷*Id.*

¹³⁸*Id.* art. 137, at 14.

What is probably the strongest and potentially most widely applicable Venezuelan enforcement provision is Article 148.¹³⁹ This provision subjects directors and company employees to prison terms ranging from two to six years when in the course of dealing in public securities transactions they provide false information regarding the operations or financial condition of the company with the object of obtaining some benefit or profit for themselves or others.¹⁴⁰ This provision can be looked upon as being similar to Section 17 of the 1933 Act since they both specifically make unlawful any fraud arising from the sale of securities.

The enforcement provisions of the Venezuelan law are quite different from those of the 1933 Act. Article 142 of the Venezuelan law provides that the administrative sanctions are to be imposed by the CNV.¹⁴¹ Appeal from an adverse decision by the CNV in this case is somewhat unique, since it must first be appealed to the Minister of Finance within five days after the sanction is imposed.¹⁴² The Minister's decision, if also adverse, can be appealed within a five day period after the decision is rendered.¹⁴³ Appeal in this instance is to be made before the Political-Administrative Chamber of the Supreme Court of Justice. As a condition to any appeal before the Supreme Court however, the appealing party must have first paid the fine which was originally imposed by the CNV.¹⁴⁴

Significantly, the Venezuelan law, unlike the 1933 Act, does not create any right of the shareholder to bring a private cause of action. Further, nowhere in the law is there any provision for any type of class action or shareholders derivative suit. Protection of shareholder interests under the Venezuelan Capital Markets Law is vested solely in the CNV. Query: would not the Venezuelan law be much more effective in terms of ensuring investor confidence and corporate compliance with registration and disclosure requirements if a private right of action had been expressly provided to remedy violations of the law? One possibility is to provide that investors be entitled to recover damages resulting from the company's noncompliance with disclosure requirements or from other deceptive practices in connection with securities transactions. Also, the law could provide that in an action for damages or rescission that there will be a lighter burden of proof for the investor and a much greater burden of proof on the defendants.

¹³⁹*Id.* art. 148, at 14-15.

¹⁴⁰*Id.*

¹⁴¹*Id.* art. 142, at 14.

¹⁴²*Id.*

¹⁴³*Id.* art. 143, at 14.

¹⁴⁴*Id.*